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15 **UNITED STATES DISTRICT COURT**  
16 **DISTRICT OF NEVADA**

17 QUY NGOC TANG and JOSEPH  
18 CESARZ, and all persons whose names  
19 are set forth in Exhibit A, individually  
20 and on behalf of all others similarly  
21 situated,

22 Plaintiffs,

23 vs.

24 WYNN LAS VEGAS, LLC,

25 Defendant.  
26 \_\_\_\_\_  
27  
28

Case No. 2:18-cv-00891-APG-GWF

**MOTION TO BE  
CONDITIONALLY  
RELIEVED AS COUNSEL**

29 Counsel for plaintiffs Quy Ngoc Tang and Joseph Cesarz (“Named  
30 Plaintiffs”), on behalf of themselves and all persons who filed a consent to join this  
31 action pursuant to 29 U.S.C. § 216(b) (collectively “Plaintiffs”), bring this motion  
32 pursuant to by Local Rule 11-6 (b) to be conditionally relieved as counsel for any

1 plaintiffs that decline to participate in the Settlement that has been negotiated in  
2 this case.

### 3 **MEMORANDUM OF POINTS AND AUTHORITIES**

#### 4 **Nature of Case and its Relevant Posture**

5  
6 In addition to the two Named Plaintiffs there are 514 Fair Labor Standards  
7 Act ("FLSA") "opt in" plaintiffs in this case. Plaintiffs' counsel brings this motion  
8 in tandem with the parties' simultaneously filed joint motion seeking the Court's  
9 approval of their proposed Settlement of this case (the "Approval Motion"). One  
10 of the conditions of that Settlement is that this case be dismissed in its entirety for  
11 all plaintiffs by a final judgment. That Settlement is of an "opt in" nature, meaning  
12 if it is approved by the Court it will only result in the resolution of the claims of  
13 those plaintiffs who affirmatively and voluntarily agree to execute a release. As  
14 discussed in the Approval Motion, the Settlement will result in a final judgment  
15 and complete dismissal of this case without compromising or impairing the FLSA  
16 claims of any of the 514 "opt in" plaintiffs who do not accept such Settlement. It  
17 does so by dismissing, without prejudice, any such "non-settling" plaintiffs' claims  
18 with a statute of limitations toll so their claims can be recommenced in another  
19 action.  
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25 This motion is brought by plaintiffs' counsel along with the Approval Motion  
26 to address the quandary or conflict posed by their expected inability to secure an  
27 affirmative agreement to the Settlement from each of their 514 FLSA "opt in"  
28

1 plaintiffs, as discussed *infra*. Such counsel seeks to have the Court appropriately  
2 relieve plaintiffs' counsel of any obligation to provide further legal representation  
3 to such persons.  
4

## 5 ARGUMENT

### 6 I. THE PROPOSED SETTLEMENT WILL CREATE 7 CIRCUMSTANCES EITHER REQUIRING PLAINTIFFS' 8 COUNSEL TO BE RELIEVED FOR NON-SETTLING 9 PLAINTIFFS OR ALLOWING THEM TO BE RELIEVED

#### 10 A. The Settlement is proper in respect to its impact on the 11 relationship between plaintiffs' counsel and their clients.

12 The Settlement's terms are discussed in the Approval Motion. The  
13 Settlement's requirement this case be concluded by a final judgment of dismissal as  
14 to all claims of all 514 "opt in" plaintiffs is a condition imposed by the settlement  
15 to which Defendant agreed.  
16

17 Plaintiffs' counsel has ensured that the Settlement, which they support and  
18 are recommending to all of the plaintiffs, will dismiss without prejudice the claims  
19 of their clients who do not accept the Settlement. The claims of any non-settling  
20 plaintiffs will be subject to a 30 day statute of limitations toll, further ensuring  
21 those claims may be brought in a promptly commenced new case without any  
22 diminution of their value. None of the "opt in" plaintiffs have paid any fees to  
23 plaintiffs' counsel or any expenses in this litigation and none have been required to  
24 participate in discovery or expend time or energy in the prosecution of this case.  
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28 The Settlement does not infringe, by its terms, upon the duties owed by

1 plaintiffs' counsel to the 514 "opt in" plaintiffs. The Settlement guards and fully  
2 preserves the legal rights of every plaintiff. An "opt in" plaintiff who declines to  
3 accept the Settlement, and must promptly commence a new lawsuit to pursue their  
4 FLSA claims (if they still seek to pursue them) will not suffer any loss in the value  
5 of those claims or the loss of any time or expense they have invested in the  
6 prosecution of this case. The Settlement does not require plaintiffs' counsel to limit  
7 their representation of such non-settling plaintiffs in such potential future cases and  
8 therefore does not violate Nevada Rules of Professional Conduct Rule 5.6.  
9

11 **B. As a practical matter the Settlement cannot**  
12 **be consummated unless plaintiffs' counsel is**  
13 **relieved as counsel for the non-settling plaintiffs**

14 Given that there are 514 "opt in" plaintiffs in this case it is seems certain that  
15 at least one, and presumably more, of those plaintiffs will not execute the  
16 necessary release and acceptance form to participate in the Settlement. Some of  
17 those plaintiffs will be unreachable or deceased. Others, out of sheer  
18 inattentiveness or other reasons, may decline to return a Settlement acceptance  
19 form or respond to plaintiffs' counsel's inquiries about doing so. Based on  
20 defendant's records two of the plaintiffs in this case, Ricky Takeya and Dilek  
21 Phipps, improperly "opted in" to this case and were not employed as table games  
22 dealers during the relevant time period. They would receive nothing from the  
23 Settlement and have no claims to release and as a result may not care about  
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1 authorizing the dismissal of their claims. If they fail to do so they will remain  
2 plaintiffs and plaintiffs' counsel will be charged with a duty to represent them.

3 Plaintiffs' counsel cannot agree to the dismissal of the claims of their clients  
4 (opt in plaintiffs) who do not sign a Settlement acceptance form or otherwise  
5 communicate their consent to having their claims in this case dismissed. It seems  
6 likely there will be at least one such opt in plaintiff who will fail to affirmatively  
7 authorize the dismissal of their claim. And the Settlement, pursuant to its terms,  
8 cannot be consummated unless the claims of every single plaintiff in this case are  
9 dismissed. As a result, the only fair solution for the parties, and plaintiffs' counsel,  
10 is to relieve plaintiffs' counsel (upon proper notice to all "opt in" plaintiffs) of their  
11 representation of any plaintiffs who decline to authorize the dismissal of their  
12 claims.  
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17 **C. There is a conflict posed for plaintiffs' counsel**  
18 **between their duties to the plaintiffs who accept the**  
19 **Settlement and those who reject it; such circumstances**  
20 **create a situation that either allows them to be relieved**  
21 **as counsel for the non-settling plaintiffs or requires it.**

22 As discussed in the Approval Motion, plaintiffs' counsel believes the  
23 proposed Settlement is very favorable under the circumstances and should be  
24 accepted by all of the plaintiffs. They are recommending its acceptance to all of  
25 their clients and would fundamentally disagree with any of the plaintiffs who elect  
26 to reject the Settlement and proceed with the prosecution of their claims in this  
27 case. That fundamental disagreement provides an appropriate basis pursuant to  
28

1 Nevada Rules of Professional Conduct Rule 1.16(b) for the Court to relieve  
2 plaintiffs' counsel as the attorney for any plaintiffs who do not accept the  
3 Settlement. Such withdrawal of representation, to be accompanied by a dismissal  
4 of that plaintiffs' claims from this case without prejudice, will be accomplished  
5 "without material adverse effect on the interests of the client" as required by such  
6 rule. Accordingly, it is proper for the Court to relieve plaintiffs' counsel as counsel  
7 for any such non-settling plaintiff on that basis.  
8  
9

10 The Settlement's condition that this case be dismissed for all of the 514 "opt  
11 in" plaintiffs also requires plaintiffs' counsel to withdraw from representing, in this  
12 case, plaintiffs who decline to accept the Settlement pursuant to Nevada Rules of  
13 Professional Conduct Rule 1.16(a)(1). Plaintiffs' counsel was separately retained  
14 by each of those 514 plaintiffs and has a duty to independently represent each one  
15 and follow their instructions. Each of those 514 plaintiffs has the right to reject  
16 any settlement of their individual claims and instruct their counsel to take their  
17 claims to trial.  
18  
19  
20

21 An irreconcilable conflict will arise if even one of the 514 "opt in" plaintiffs  
22 were to reject the Settlement and instruct plaintiffs' counsel to proceed to trial in  
23 this case on their claim. The Settlement has been agreed to by the two named  
24 plaintiffs and plaintiffs' counsel anticipates that a strong majority of their other  
25 clients, the opt in plaintiffs in this case, will accept the Settlement. Yet by  
26 following, as they must, the instructions of even one of those 514 "opt in" plaintiffs  
27  
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1 to reject the Settlement and proceed to trial plaintiffs' counsel would render the  
2 Settlement unattainable for all of their other clients who want plaintiffs' counsel to  
3 secure that Settlement.  
4

5 Following the instructions of even one plaintiff/client to proceed to trial in  
6 this case, while other plaintiff/clients want to consummate the Settlement, would  
7 cause plaintiffs' counsel to violate the Nevada Rules of Professional Conduct Rule  
8 *See*, NRPC Rule 1.7(a)(1) (An attorney "shall not represent a client" when the  
9 "representation of one client will be directly adverse to another client") Either the  
10 client seeking to go to trial in this action with plaintiffs' counsel, or the clients  
11 seeking to have plaintiffs' counsel consummate the Settlement, will have their  
12 objective obstructed by plaintiffs' counsel's actions (such clients will have "directly  
13 adverse" interests). Accordingly, plaintiffs' counsel, as a result of that violation  
14 created of Rule 1.7(a)(1), would have to be relieved from representing one of those  
15 now adverse clients or groups of clients. *See*, NRPC Rule 1.16(a)(1) (Attorney  
16 "shall withdraw from representation of a client" if it would result in a violation of  
17 another rule of professional conduct).  
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22 **II. THE COURT SHOULD APPROVE THE DISTRIBUTION OF**  
23 **A NOTICE OF MOTION OF PLAINTIFFS' COUNSEL'S**  
24 **REQUEST TO BE RELIEVED FOR ANY NON-SETTLING**  
25 **PLAINTIFFS AND AUTHORIZE RESPONSES TO THE SAME**

26 Local Rule 11-6(b) states an attorney who seeks to withdraw "must file a  
27 motion or stipulation and serve it on the affected client" and the affected client  
28

1 "may" but need not file a response to that motion within 14 days of its filing  
2 "unless the court orders otherwise." It is submitted under LR 11-b(6) the Court  
3 can regulate the distribution of notice to a client of an attorney's intention to be  
4 relieved as counsel and the response process for clients to that request.  
5

6  
7 Plaintiffs' counsel are requesting that the Court direct the distribution of a  
8 concise form of motion to conditionally be relieved as counsel to all 514 FLSA  
9 "opt in" plaintiffs in this case in the form annexed as Exhibit "A." That form  
10 would be distributed with the Settlement notice and acceptance forms discussed in  
11 the Approval Motion and is intended to clearly advise any plaintiffs who decline to  
12 accept the proposed Settlement of their attorneys' request to be relieved. It  
13 provides a time period that will be far in excess of the 14 days allowed otherwise  
14 under LR 11-b(6) for those persons to file objections to that request. It also advises  
15 them of their rights under the terms of the proposed Settlement to continue to  
16 pursue the claims they have made in this case by filing a new lawsuit.  
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1                   **CONCLUSION**

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3           Wherefore, the motion of plaintiffs' counsel to be conditionally relieved as  
4 counsel for any non-settling plaintiffs and distribute a Court approved notice of  
5 that motion should be granted.  
6

7                                   Respectfully submitted,

8  
9 DATED: December 21, 2020

LEON GREENBERG PROF. CORP.

10  
11                                   By: /s/ Leon Greenberg  
12                                   Leon Greenberg   #8094  
13                                   2965 South Jones Boulevard  
14                                   Suite E-3  
15                                   Las Vegas, NV 89146  
16                                   Tel: (702) 383-6085  
17                                   Attorneys for Plaintiffs  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 21ST day of December, 2020, the undersigned, served a copy of the foregoing **MOTION** pursuant to the Electronic Case Filing system of the United States District Court, District of Nevada on the following parties:

/s/ Leon Greenberg

# EXHIBIT "A"

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

QUY NGOC TANG and JOSEPH  
CESARZ, and all persons whose names  
are set forth in Exhibit A, individually  
and on behalf of all others similarly  
situated,

Plaintiffs,

vs.

WYNN LAS VEGAS, LLC,

Defendant.

Case No. 2:18-cv-00891-APG-GWF

**NOTICE OF MOTION TO BE  
CONDITIONALLY  
RELIEVED AS COUNSEL**

TO: (Name and Mailing Address of Opt In Plaintiff)

YOU ARE RECEIVING THIS NOTICE ALONG WITH A "NOTICE OF SETTLEMENT IN WYNN TIP POOLING CASES" EXPLAINING YOUR RIGHT TO PARTICIPATE IN A PROPOSED SETTLEMENT OF THIS CASE. **IF YOU HAVE DECIDED TO ACCEPT THAT SETTLEMENT AND ARE SIGNING AND RETURNING A "SETTLEMENT OFFER AND RELEASE" FORM YOU SHOULD IGNORE THIS NOTICE AS IT DOES NOT APPLY TO YOU.**

IF YOU ARE ***NOT*** RETURNING A "SETTLEMENT OFFER AND RELEASE" FORM REGARDING THE PROPOSED SETTLEMENT OF THIS

1 CASE OR INTEND TO REJECT THAT PROPOSED SETTLEMENT YOU  
2 SHOULD READ THIS NOTICE. IT ADVISES YOU OF THE REQUEST OF  
3 YOUR ATTORNEYS IN THIS CASE TO BE RELIEVED AS YOUR  
4 ATTORNEYS SO THIS CASE MAY BE DISMISSED AND THE PROPOSED  
5 SETTLEMENT COMPLETED. THAT DISMISSAL WILL NOT PREVENT  
6 YOU FROM PROCEEDING WITH THE CLAIMS YOU HAVE MADE IN THIS  
7 CASE, BUT TO DO THAT YOU WILL HAVE TO FILE A NEW LAWSUIT  
8 WITHIN A LIMITED AMOUNT OF TIME AND YOUR CURRENT  
9 ATTORNEYS ARE NOT REQUIRED TO ASSIST YOU WITH DOING THAT.

10  
11 **Why does this notice apply to me if I am not**  
12 **accepting the proposed Settlement of this case?**  
13

14 When you filed a claim as part of this lawsuit against the Wynn Casino for  
15 tips allegedly owed to you and other casino table games dealers you agreed to be  
16 represented by the three attorneys listed at the top of the first page of this notice  
17 (Leon Greenberg, J.P. Kemp and Mark Thierman). Those attorneys have  
18 negotiated a proposed Settlement of this case and are recommending that you and  
19 all of the other plaintiffs in this case (all of the Wynn dealers who joined this case)  
20 accept that settlement. The terms of that Settlement are explained in the other  
21 papers you are receiving with this notice.

22 You do not have to accept the proposed Settlement of this case. But the  
23 attorneys representing you in this case believe they cannot continue to represent  
24 you in this case, and do not want to continue to represent you, if you do not want to  
25 accept that Settlement. One of the conditions of that Settlement is that this entire  
26 case be dismissed for all of the over 500 Wynn dealers who have joined this case.  
27 The attorneys who represent you believe, based on that condition of the Settlement,  
28 it would be conflict of interest under the Nevada Rules of Professional Conduct for  
attorneys, Rule 1.7(a)(1) for them to continue to represent anyone who does not  
accept the Settlement. They believe that conflict of interest, and their strong belief  
all of the plaintiffs in this case should accept that Settlement, either requires or  
allows the Court, pursuant to Nevada Rules of Professional Conduct for attorneys,  
Rules 1.16(a)(1) and 1.16(b), to relieve them as the attorney for any plaintiff who  
refuses to accept that settlement. In compliance with that belief, the attorneys who  
represent you in this case are asking the Judge to relieve them as your attorneys if  
you are not agreeing to the Settlement of this case and are not signing and  
returning a "Settlement Offer and Release" form.

**What can I do in response to this notice if I am not  
accepting the proposed Settlement of this case?**

The purpose of this notice is to ensure you are advised of your rights and your attorneys' request to be relieved as your attorneys if you choose to not accept the proposed Settlement. The Court in this case must decide whether to grant that request of your attorneys. The Court currently plans to decide that request on INSERT DECISION DATE. The Court has not yet decided whether to grant that request.

You do not have to do anything in response to this notice. You have the right to tell the Court of any objections you have to your attorneys' request to be relieved as your attorneys. The Court will consider any objections you have to that request. But if you want the Court to consider those objections you must make them in writing and have them filed with the Court, and delivered to your attorneys at the three addresses listed at the top of page one of this notice, no later than INSERT DATE 21 DAYS PRIOR TO DECISION DATE. The Court is located at Lloyd D. George United States Courthouse, 333 Las Vegas Boulevard South, Las Vegas, Nevada 89101 and the Judge who will decide the request of your attorneys to be relieved as your attorney is United States District Judge Andrew P. Gordon. You should not telephone or attempt to speak with the Judge or his staff directly and may want to seek assistance from an attorney regarding the filing any objections you may want to make.

**If I am not accepting the proposed Settlement of this case  
and the Court grants my attorneys' request to be relieved  
can I still have the Court to decide the claims I made in this case?**

A decision by the Court granting your attorneys' request to be relieved as your attorneys does not change your right to have the Court decide the claims you made in this case. It only means those attorneys have no further responsibility to take any action on your behalf. The proposed Settlement contains terms that will allow you to fully pursue those claims by filing a new lawsuit within a limited amount of time. If you file that new lawsuit within 30 days from the date a final judgment is entered in this case, you will have the right to pursue with equal force all of the claims you made in this case. If you wait beyond that time period to file such a new case you may not. If you are not accepting the proposed Settlement and the Court grants your attorneys' request to be relieved as your attorneys you may want to find another attorney to assist you in pursuing your claims in a new lawsuit. Your current attorneys have not agreed assist you in filing any such new lawsuit and are not required to assist you with doing so.